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ORACLE AMERICA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE INC.

Defendant.

Case No. CV 10-03561 WHA

**DECLARATION OF ANNETTE L. HURST  
RE: GOOGLE INC.'S MOTION FOR  
RECONSIDERATION [DKT. NO. 1462]**

Dept.: Courtroom 4, 3rd Floor (Oakland)

Judge: Hon. Donna M. Ryu

Date: March 8, 2016

Time: 11:00 a.m.

1 I, Annette L. Hurst, declare as follows:

2 1. I am a partner at the law firm Orrick, Herrington & Sutcliffe LLP, counsel of  
3 record for Plaintiff Oracle American, Inc. ("Oracle") in this action. I have personal knowledge  
4 of the facts stated in this declaration except where stated as to information and belief. If called  
5 upon to testify competently hereto, I could and would do so.

6 2. I made the statement regarding my understanding of the approximate revenues and  
7 profits that Google derived from Android since its release, at page 4 of the transcript of the  
8 January 14, 2016 hearing, in response to the Court's request that I explain how information  
9 sought in the motion to compel would "play into" apportionment of profits. I referred to the  
10 revenue and profit estimates as part of that explanation, to assist the Court's understanding, and  
11 for no other reason.

12 3. I made the same reference to estimated revenue and profits, at page 6 of the  
13 transcript, in response to a question from the Court regarding the relevance to fair use of  
14 information requested in the motion to compel. I referred to the revenue and profit estimates as  
15 part of that explanation, to assist the Court's understanding, and for no other reason.

16 4. I did not anticipate or expect prior to the January 14 hearing that I would disclose  
17 these particular numbers referred to in paragraphs 2 and 3 above. I did not prepare to mention  
18 them and gave the estimates on the spot from memory. I have gone back to review the  
19 documentation since then and my estimates were not entirely accurate reflections of Oracle's  
20 then-existing expert calculations. In other words, I did not consult Oracle's expert reports either  
21 in advance of or during the hearing in order to confirm the numbers and then recite them to the  
22 Court.

23 5. I referred to the deposition testimony of Mr. Gold with respect to Google's  
24 revenue share with Apple, at page 29 of the transcript, as part of a long discussion in which the  
25 Court inquired why Oracle needed granular information on that subject. During that discussion  
26 Google's counsel inaccurately stated that Oracle already had the information it was requesting,  
27 and cited Mr. Gold's testimony as the source of such information.  
28

1           6.       I did not bring the Gold deposition transcript with me to the hearing. Because  
2 counsel's assertions about Mr. Gold's testimony did not jibe with my recollection of what the  
3 witness had said, I asked one of my colleagues to find a copy and identify the relevant pages so  
4 that I could respond. He did so and handed me his laptop, which I held in front of me at the  
5 podium in order to respond to the assertions of Google's counsel as part of the argument.

6           7.       I referred to Mr. Gold's testimony regarding the revenue share in response to  
7 counsel's repeated inaccurate assertions that the testimony provided the information sought in  
8 the motion to compel. I referred to the testimony for the purpose of providing accurate  
9 information to the Court, and for no other purpose.

10          8.       I did not anticipate or expect that I would be referring to these particular passages  
11 of Mr. Gold's deposition testimony prior to the January 14 hearing. I did not refer to them in  
12 advance during my preparation for the hearing.

13          9.       Oracle and Orrick were contacted by members of the press to comment on this  
14 information after Google filed its motion to seal. Although the Court had already denied  
15 Google's motion to seal made at the hearing, neither Oracle nor any of Orrick's lawyers  
16 provided any comment on the record, or discussion on background or off the record. We did not  
17 supply copies of the transcript to journalists, nor (despite requests) identify the court reporter  
18 from whom a transcript could be ordered. After leaving the courtroom, I have not discussed the  
19 information disclosed during the hearing or the contents of the hearing transcript with anyone  
20 other than in a privileged and confidential context.

21               I declare under penalty of perjury under the laws of the United States and the State of  
22 California that the foregoing is true and correct.

23  
24 Dated: February 4, 2016

By:           /s/ Annette L. Hurst            
Annette L. Hurst